THE HONOURBALE SRI JUSTICE GODA RAGHURAM

WP NO.34506 of _1998

Between:

M.Subba Rao

....Petitioner

Vs.

The Second Appellate Authority under APSE Act and Dy.Commissioner of Labour, Zone-II, Eluru and others

…Respondents

THE HONOURBALE SRI JUSTICE GODA RAGHURAM

WP NO.34506 OF 1998

ORAL ORDER

The petitioner filed APSE No.15 of 1993 before the 2nd respondent under the provisions of the A.P. Shops and Establishments Act,1988 alleging that he was unlawfully terminated on 25-07-1993. The said application was allowed on 31-12-1993. The order of termination was set aside and the 3rd respondent-the employer directed to reinstate the petitioner into service with all consequential benefits. Consequent to this order the petitioner reported to duty before the 3rd respondent on 18-02-1994. As he was not reinstated, he filed an application under Section.50 of the Act to recover the amounts due from the 3rd respondent. At that stage the 3rd respondent filed an application before the 2nd respondent-authority for setting aside the *ex parte* order dated.31-12-1993, by which the petitioner's application was allowed. This application was dismissed on 08-12-1995. There against the petitioner preferred an appeal to the 1st respondent in APSE No.4 of 1997. By the order impugned herein dated.29-12-1997 the 3rd respondent's appeal was allowed. The 1st respondent set aside the order of the 2nd respondent dated.31-12-1993 and remanded the matter to the 2nd respondent for a *de novo* enquiry and disposition.

In the order impugned the 1st respondent-appellate authority has recorded that the petitioner's application for reinstatement was filed before the 2nd respondent in November-1993 and was posted for hearing on 28-12-1993. Notice of hearing was dispatched by registered post with acknowledgment due on 20-12-1993 to the 3rd respondent and was received back by the 2nd respondent on 12-01-1994 with a postal endorsement of "addressee not in town". Even before return of the un-served notice, the 2nd respondent heard the matter on 31-12-1993 and disposed of

the petitioner's application in transgression of the principles of natural justice. Again and even in respect of the 3rd respondent's application seeking setting aside of the *ex parte* order dated.31-12-1993 the matter was adjourned from time to time and record does not disclose that notice of the adjournments was served on the 3rd respondent. On each of the occasions the petitioner-workman was present but the management was not represented and there was nothing on the record of the 2nd respondent's file to disclose that notice of hearing either in the original application or on the 3rd respondent's application to set aside the default order was served on the 3rd respondent. In the light of the material on record, the 1st respondent allowed the 3rd respondent's appeal, set aside the order dated.31-12-1993 of the 2nd respondent and remanded the matter for a fresh consideration by the 2nd respondent.

Sri A.K.Jayaprakash Rao, the learned counsel for the petitioner would urge that the 1st respondent acted illegally in entertaining and disposing of the appeal of the 3rd respondent without even an application for condonation of delay filed by the 3rd respondent along with his appeal and even without a deposit of 50% of the amount due to the petitioner under the orders of the 2nd respondent dated.31-12-1993.

On an analysis of the order impugned it is clear that the 2nd respondent-primary authority had heard and disposed of the petitioner's original application even without notice and a reasonable opportunity to the 3rd respondent-employer. The 2nd respondent also acted wholly illegally in scheduling the hearing of the 3rd respondent's application to set aside the default order without hearing and affording opportunity to the 3rd respondent. The orders of the 2nd respondent dated.31-12-1993 and the other dated.08-12-1995 are clearly in violation of the essential principles of fairness i.e., *audi alteram partem* and therefore a nullity. The impugned order of the 1st respondent setting aside the order of the 2nd respondent dated.31-12-1993 is therefore impeccable and is not liable to be interfered with. Interference in the writ petition with the appellate order on the technical grounds urged by the petitioner would restore the void orders of the primary authority. The discretionary relief of mandamus may not be exercised in such circumstances.

There are no merits. The writ petition is accordingly dismissed. The 2nd

respondent shall dispose of the petitioner's original application expeditiously and this time after opportunity to the 3rd respondent and the petitioner. No order as to costs.

_____

GODA RAGHURAM,J

10th SEPTEMBER 2007
***TSNR**